



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for July 7, 2023

Note: These summaries are descriptions prepared by individual MSPB employees. They do not represent official summaries approved by the Board itself, and they are not intended to provide legal counsel or to be cited as legal authority. Instead, they are provided only to inform and help the public locate Board precedents.

BOARD DECISIONS

Appellant: Marnie B. Golden
Agency: Department of Veterans Affairs
Decision Number: [2023 MSPB 19](#)
Docket Number: CH-3330-16-0556-I-1
Issuance Date: July 6, 2023

VEOA/VETERANS' RIGHTS JURISDICTION

The appellant filed a Veterans Employment Opportunities Act of 1998 (VEOA) complaint with the Department of Labor (DOL) regarding her nonselection for a position with the agency. After DOL issued a letter informing the appellant that it was closing her case because it had determined that she failed to meet eligibility requirements for veterans' preference under 5 U.S.C. § 2108, the appellant timely appealed to the Board. The administrative judge issued an initial decision dismissing the matter for lack of jurisdiction, finding that the appellant failed to make a nonfrivolous allegation that she was a preference eligible under 5 U.S.C. § 2108. The appellant filed a petition for review.

Holding: For a disabled veteran to be considered a preference eligible under 5 U.S.C. § 2108, she must have been separated under honorable

conditions.

1. The Board explained that the appellant's DD Form 214 (DD-214) Certificate of Release or Discharge from Active Duty reflected the character of her service as "uncharacterized" and that she had identified nothing on review to indicate that the classification of the character of her service had changed.
2. The Board explained that the appellant's DD-214 cited Army Regulation 635-200, which treats honorable and under honorable condition characterizations of service or descriptions of separation as distinct from "uncharacterized" descriptions. The Board reasoned that, although the applicable regulation indicated that an "uncharacterized" discharge is not necessarily one that occurred under other than honorable conditions, it was clear that a designation of "uncharacterized" does not indicate that a discharge was under honorable conditions for the purpose of veterans' preference statutes and regulations.
3. Accordingly, the Board concluded that the appellant had not met her jurisdictional burden and that the administrative judge had properly dismissed the matter for lack of jurisdiction.

COURT DECISIONS

PRECEDENTIAL:

Petitioner: Jacquana Williams

Respondent: Federal Bureau of Prisons

Tribunal: U.S. Court of Appeals for the Federal Circuit

Case Number: [2022-1575](#)

Issuance Date: July 6, 2023

ARBITRATION

PENALTY

Ms. Williams appealed an arbitration decision that upheld her removal from her position as a correctional officer. The court vacated and remanded the arbitration decision, finding that the arbitrator erred in his penalty analysis. To this end, although the arbitrator had sustained only one of the two charges against Ms. Williams, he nonetheless deferred to the deciding official's penalty determination. The court explained that, because the arbitrator had sustained fewer than all of the agency's charges and the agency had not indicated that it desired a lesser penalty than removal if only the sustained charge was upheld, the arbitrator was required to independently determine the maximum reasonable penalty by analyzing and balancing the relevant *Douglas* factors.

The court also found that the arbitrator had erred by deferring to the deciding official's findings of fact, which the arbitrator himself had rejected.

NONPRECEDENTIAL:

Trimble v. Department of Veterans Affairs, No. [2023-1306](#) (Fed. Cir. June 30, 2023) (DA-3330-22-0254-I-1) The court affirmed the Board's decision denying Ms. Trimble's request for corrective action under VEOA. The court found that (1) substantial evidence supported the Board's conclusion that Ms. Trimble had an opportunity to compete for a position for which she had applied, but was not selected and (2) Ms. Trimble failed to identify any violations that would give rise to a viable VEOA claim. The court also found unavailing Ms. Trimble's claim that the Board had violated her due process rights by not holding a hearing, explaining that the Board may decide a VEOA appeal on the merits without a hearing when there is no genuine dispute of material fact.

Trimble v. Department of Veterans Affairs, No. [2023-1307](#) (Fed. Cir. June 30, 2023) (DA-4324-22-0350-I-1) The court affirmed the Board's decision denying Ms. Trimble's request for corrective action under the Uniformed Services Employment and Reemployment Rights Act of 1994. The court found that substantial evidence supported the Board's conclusion that Ms. Trimble's military service was not a motivating factor in her nonselection for the position for which she had applied.

[MSPB](#) | [Case Reports](#) | [Recent Decisions](#) | [Follow us on Twitter](#) | [MSPB Listserv](#)